THE HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.18547 of 2006

Date: 18th October, 2006

Between :-

S.K.Dastagir and two others ..

Petitioners

And

The Kagaznagar Municipality,
Kagaznagar, rep. by its Chair Person
And 3 others ..
Respondents

THE HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.18547 of 2006

ORDER:-

This Court issued *rule nisi* on 8-9-2006.

2. The first respondent filed counter affidavit and the reply affidavit is also filed.

3. At the request of the Counsel on record, the Writ Petition is being disposed of finally though the matter is appearing under the caption *Interlocutory*.

4. The Writ Petition is filed for a Writ of Mandamus or any other appropriate writ declaring the proceedings No.C.1/571/2006 dated 30-8-2006, proceedings No.C.1/572/2006 dated 30-8-2006 and proceedings No.C.1/570/2006 respectively placing the petitioners under suspension for a period of three months as illegal, arbitrary and without jurisdiction and to pass such other suitable orders.

5. Sri Vidyasagar, the learned Counsel representing the writ petitioners would submit that as can be seen from the impugned order, Section 51(3) of the A.P.Municipalities Act 1965 is not applicable at all. The learned Counsel also would submit that even otherwise, no notice had been given prior to 3 clear days before the date of meeting and hence the very meeting held on 30-8-

2006 is not in accordance with Rule 2(1) of Schedule-1. In view of the same the impugned order cannot be sustained and the Writ Petition to be allowed.

6. Per contra, Sri Polisetti Radha Krishna, the learned Counsel representing Respondents 1 and 4 would submit that there is a resolution of Council and in pursuance of the resolution, the impugned action had been initiated. The learned Counsel in all fairness would submit that the impugned action was taken under Section 51(5) of the A.P.Municipalities Act 1965 and the mere fact that Section 51(3) of the said Act had been specified may not in any way affect the validity of the same. The learned Counsel also would submit that though incidentally the validity of the meeting as such had been raised as a ground, the same would not alter the situation seriously in the light of the serious allegations and also in the light of the specific provision under Section 51(5) of the A.P. Municipalities Act, 1965. Even otherwise, the learned standing Counsel would submit that in the light of the relief which had been prayed for in the Writ Petition, the same cannot be made as a ground of attack.

7. Heard the Counsel.

8. The petitioners filed the present Writ Petition questioning the proceedings No.C.1/571/2006 dated 30-8-2006, proceedings No.C.1/572/2006 dated 30-8-2006

and proceedings No.C.1/570/2006 by virtue of which the petitioners were placed under suspension for a period of three months on certain grounds. It is stated that the petitioners were elected as Ward Members of Kagaznagar Municipality, Kagaznagar, Adilabad in the elections held in September, 2005. It is also stated the Kagaznagar Municipality consists of 28 Ward Members and the first petitioner is elected Member of Ward No.9, the second petitioner is Member of Ward No.19 and the third petitioner got elected from Ward No.17. It is also stated that a notice dated 28-8-2006 was issued by the Chair Person of the Municipality convening a Council General Meeting on 30-8-2006 at 4.00 p.m., in the Council Hall to transact various agenda items. It is further stated that the petitioners herein have not attended the said meeting and only 15 members had attended the meeting. It is also further stated that after the meeting, the petitioners came to know that they were suspended from the proceedings invoking Section 51(3) of the Municipalities Act, 1965 and a copy of the same was also communicated to them vide No.C.1/571/2006 dated 30-8-2006, proceedings No.C.1/572/2006 dated 30-8-2006 and proceedings No.C.1/570/2006 respectively. It is also further stated that immediately the petitioners had asked for a copy of the

resolution as well as the register in which the Members have signed on the date of the meeting but the Commissioner and Chair Person refused to furnish the same. It is further stated that the impugned order dated 20-8-2006 placing the petitioners under suspension for a period of three months is illegal and arbitrary. It is also further stated that in terms of Schedule-I read with Rule 2(1), no meeting shall be held unless a notice of three clear days is given before the date of the meeting. Section 2(1) of Schedule-I reads as hereunder:-

> *"No meeting shall be held unless notice of the day and time when the meeting is to be held and of the business to be transacted thereat has been given at least three clear days before the day of the meeting."*

It is also further stated that as per the above provision, for the meeting scheduled to be held on 30-8-2006, notice has to be given three clear days before the date of meeting and thus the meeting held on 30-8-2006 itself is contrary to Rule 2(1) of Schedule-I. It is also further stated that the agenda of the meeting also would disclose that there is no urgency to convene a meeting by giving a shorter notice than that specified in sub-rule (1) of Rule 2 and the notice also does not refer any urgency in convening the meeting and thus the agenda notice dated

28-8-2006 and consequential meeting held on 30-8-2006 are contrary to law and proceedings which took place on 30-8-2006 are to be declared as null and void. It is further stated that the impugned proceedings disclose that the petitioners herein had disrupted the proceedings and conducted themselves in an disorderly manner and in fact, the petitioners herein had not signed in the Attendance Register nor they were present in the meeting, which was alleged to have been taken place on 30-8-2006 and the Attendance Register would clearly show that the petitioners herein had not attended the meeting and in their absence, no resolution could have been passed invoking Section 51 of the Act. It is also further stated that in terms of Section 51(3) of the A.P.Municipalities Act, 1965 (here-in-after in short referred to as 'Act' for the purpose of convenience) a Member who conducts himself in a disorderly manner may be directed to withdraw from the meeting of the Council and he shall not be allowed to attend the meeting for the reminder of the days of meeting and in terms of Section 3(b) of the Act where the Member continues to remain in the meeting, the Chair Person may take steps to cause him to be removed and therefore, placing the petitioners under suspension for three months is contrary to Section 51(3) of the Act. It

is also further stated that the action on the part of the respondents in placing the petitioners under suspension for a period of three months is illegal and contrary to Section 51 of the Act. It is stated that Section 51 of the Act can be invoked only where the Ward Members has participated in the meeting and acted contrary to the provisions of Section 51 of the Act and thus, no resolution can be passed in respect of a Ward Member who was not present in the meeting. It is also further stated that the petitioners herein were not present at the meeting on the scheduled date i.e., 30-8-2006 and therefore, invoking the provisions of Section 51 of the Act is illegal and beyond the powers vested with the first respondent and thus the entire action is *mala fide* and intended for political gains. It is further stated that the Chair Person and Commissioner are acting in a manner prejudicial to the interest of the Municipality and they had been instrumental in placing the petitioners also under suspension for a period of three months contrary to provisions of Section 51 of the Act.

9. In the counter affidavit filed by the first respondent, it is stated that the petitioners entered the Council Hall on 30-8-2006 in between 3.00 p.m., and 4.00 p.m., and inst5ead of attending the meeting the petitioners began to shout, using unparliamentary language against the Members, especially women Members, thrown away the

name plates and other important papers here and there and went away with threatenings and this news also was published in daily telugu newspapers. It is further stated that the petitioners knowingly and intentionally created unhealthy atmosphere in Council Hall by disrespecting the other Members including the Chair Person and that the petitioners intentionally did not sign in the Attendance Register of Council Meeting perhaps to say that they had not attended the meeting. It is also further stated that seeing the grave circumstances and unhealthy atmosphere created by the petitioners, the respondent was compelled to invoke the powers vested on him under the Act and as such a unanimous resolution was passed by 16 Members including the respondent to suspend the petitioners. It is stated that the petitioners when asked the copy of resolution, they were asked to remit the required fee for copy of resolution and come after two days and it is absolutely incorrect to state that the respondent had not furnished copy of the resolution. It is also further stated in para 5 of the counter affidavit that the Act empowers the 1st respondent to suspend any Member if the circumstances warn. It is also stated that the Writ Petition is not maintainable in view of the facts stated. The writ petitioners used unparliamentary language against the

Members in the Council and the said language is not supposed to be incorporated in the present counter affidavit. Specific stand was taken that notice was served two days prior to the meeting. It is also further stated that in the agenda there were so many items to be discussed and in the interest of public i.e., C.C.Roads and Drains in different Wards to be laid as there was a pressure by the public and Ward Members to lay the Roads due to heavy rains and Rs.1,00,000/- allotted to each C.C.Road in different Wards, so the meeting was called to discuss 19 works. It is also further stated that the petitioners intentionally had not signed in Council Attendance Register and acted themselves in a disorderly manner to disturb the meeting and to humiliate the other Members including the 1st respondent. There is sufficient evidence to show that the petitioners were very much present in the meeting hall and they knowingly suppressed the fact of their attendance for the purpose of filing the present Writ Petition. Further specific stand was taken that due to typographical error instead of Section 51 sub-Section (5) of the Act, sub-Section (3) was typed and by mentioning of the wrong provision itself, it cannot be said that the impugned order which is otherwise in accordance with law is unsustainable.

10. A reply affidavit is filed reiterating the stand taken in the affidavit filed in support of the Writ Petition again and narrating certain other facts. It is stated in para 3 of the reply affidavit that the 1st respondent issued a notice dated 28-8-2006 that the Council's General Meeting is scheduled on 30-8-2006 at 4.00 p.m., in the Council Hall and therefore the allegation that the petitioners entered the Council Hall on 30-8-2006 in between 3.00 p.m., and 4.00 p.m., and instead of attending the meeting, began shouting using unparliamentary language against the Members, especially women Members and threw away the name plates and other important papers here and there and threatened is incorrect, misconceived and baseless. It is also stated that without admitting the said allegations made by the 1st respondent, the meeting is scheduled at 4.00 p.m., and no cognizance can be taken of any events which took place prior to the meeting. It was specifically averred in para 4 of the reply affidavit that the meeting of the Council would start only after the Members sign in the attendance register. It is further stated that the manner in which the 1st respondent acted would clearly demonstrate that even after the resolution is passed, placing the petitioners under suspension and on coming to know of it, when the petitioners made a

representation for copy of the resolution, the 1st respondent failed to furnish the same and directed the petitioners to come after two days and this itself would show that the entire proceedings had been done intentionally by the 1st respondent with the sole purpose to please somebody and deprive the petitioners of their legitimate right to participate in the meeting of the Council.

It is also further stated that in fact the 1st respondent hatched a plan to make such an issue solely with an intention to hush up the irregularities committed by him and his henchmen. It is also stated that the petitioners had been making an issue with regard to the illegal appointments made by the Municipal Council and same was also published in the newspapers on 14-7-2006. It is also further stated that in the meeting held in April, 2006 the petitioners had responded to the news items published in “Vartha” daily newspaper about the irregularities committed by the Contractor executing the works under “Rajiv Nagara Bata” package. It is also stated that the petitioners had also made a grievance with regard to the Municipal Chairman engaging a private car at Rs.12,500/- per month and also directing the Municipality to pay the cell phone bill to a tune of Rs.13,650/-. It is also further stated that sensing that the

petitioners will be making an issue with regard to the illegal convening of the General Council Meeting scheduled on 30-8-2006, the 1st first respondent had chosen to make wild allegations against the petitioners only with an intention to suspend the petitioners from attending the meetings. Further specific stand had been taken that if clear three days notice is not given for the meeting, the same being mandatory, the entire proceedings and the resolution passed on 30-8-2006 also would be vitiated.

11. The learned standing Counsel Mr.Polisetti Radha Krishna placed the records before this Court, the original resolution, and also had pointed out the nature of unparliamentary language used and also certain other factual details which are not specifically narrated in the counter affidavit.

12. It is no doubt true that three days prior notice to the meeting had not been given and even in the light of the stand taken in the counter affidavit, two days notice had been given. The impugned order is being questioned on the said ground also but however the said ground is raised questioning the validity of the meeting for the purpose of attacking the validity of the impugned order. It appears the resolution had not been challenged. It is

needless to say that as per the records, the impugned action had been initiated as against the respective writ petitioners by the 1st respondent in pursuance of the Council's resolution and in fact in the Note, the Council Resolution No. 216 dated 30-8-2006 had been referred to. Section 51 of the Act deals with ***Presidency of council and chairman*** and **s**ub-section (3) of Section 51 of the Act reads as hereunder:-

> *(a) Where the conduct of a councillor is in the opinion of the chairman disorderly, he may direct that such councillor shall withdraw from the meeting of the council and such councillor shall thereupon withdraw and shall not be allowed to attend for the remainder of the day's meeting.*
>
> *(b) If any councillor, who has been ordered to withdraw, continues to remain in the meeting, the chairman may take steps to cause him to be removed.*

It is true that a wrong sub-section had been specified in the impugned order instead of showing sub-Section (5) of 51 of the Act. Sub-Section (5) of Section 51 of the Act reads as hereunder:-

> *(a) The chairman may, if he deems it necessary, name a councillor who disregards the authority of*

the chair or abuses the rules, bye-laws or regulations of the Council by persistently and wilfully obstructing the business thereof.

(b) If a Councillor is so named by the Chairman, the Chairman shall at meeting of the council forthwith put the question that the councillor (naming him) be suspended from functioning in the council as such for a period not exceeding three consecutive months reckoned from the date of that meeting.

Provided that the council may, at any time resolve that such suspension be terminated.

(c) A Councillor suspended under this sub-section shall forthwith withdraw from the precincts of the council.

In ***N.HANUMANTHA RAO & ANOTHER v. GOVT. OF A.P. AND OTHERS (W.P.No.5701/84, dt.16-4-1984)*** this Court held that *action under Sc.51(5) would arise only when the erring Councillors who were very much present at the meeting are found to be persistently and wilfully obstructing the business of the Council. The Section for that reason does not contemplate the giving of any notice as such to the erring Councillor obviously because the erring Councillor would be physically present at the*

meeting when the resolution suspending the erring Councillors is under consideration of the Council in the immediate presence of the erring Councillor. In this case, the occasion arose for the Chairman to name the two petitioners, a pre-requisite under Sec.51 (5)(a) of the Act. The Chairman, then put the question of suspension to the vote of the Council and the Council by a majority resolved to suspend the petitioners for two consecutive months reckoned from the date of the meeting. The requirements of Sec.51(5)(b) have thus been satisfied. In ***R.RAMACHANDRA RAO v. AMALAPURAM MUNICIPALITY (W.P.No.6726/1982 dt.3-11-1982)*** it was held that *whereas the Chairman is empowered to direct a Councillor to withdraw from meeting for the day, he is not empowered to suspend, by himself, any member under sub-section (5) of Sec.51. In case a Councillor disregards the authority of the Chair or abuses the rules or otherwise persistently or wilfully obstructed the business thereof, the Chairman has to name him and then immediately put the question to the Council that the Councillor named by him should be suspended from functioning in the Council for a period not exceeding three consecutive months. Once the question is put to Council, it is for the Council to decide either to approve the question or the suggestion as it may*

be called, put by the Chairman or to disapprove it. The proviso which empowers the Council to resolve to terminate the suspension at any time, also throws light upon the meaning and intent behind clause (b). It is for the Council to resolve or to decide whether to suspend such member or not, and if so for what period.

13. Healthy criticism and dissent by the peoples' representatives always to be taken as good signs of democracy. However, unruly behavioral tendencies not to be permitted under the guise of either such criticism or dissent. Equally, the brutal majority adopting unlawful methods depriving such representatives to express their views also may not be in the interest of the democratic functioning of the institution. It is needless to say that it would be difficult to lay down exhaustive guidelines in the functioning of these systems though these are governed by certain of the statutes, rules, regulations, bye-laws etc. In the democratic functioning of these local bodies, the peoples representatives have a right to ventilate their views in a free and fair manner but such freedom not to be exercised beyond permissible limits especially resorting to creation of unruly scenes and also using unparliamentary language in general and in relation to the women members in particular, in the back-drop of our traditional

society. This kind of unruly behaviour on the part of the peoples' representatives may have to be discouraged and deprecated, failing which, such things would cause a costly price seriously injuring the very functioning of the democratic institution, be that local bodies or otherwise. In ***SATYA NARAIN SHUKLA v. UNION OF INDIA AND OTHERS (2006 (6) SCJ 272)*** the Apex Court observed that *dissent is the essence of democracy and merely because one disagrees with another, one cannot jump to conclusion that the latter harbors a grudge against former*

14. It is no doubt true that there is some controversy between the parties, in the light of the respective stands taken by these parties, relating to the attendance of the petitioners on the fateful day, the 1st respondent asserting that intentionally the petitioners had not signed in the Attendance Register and the petitioners asserting that they were not present, the writ Court cannot go into the said factual controversy but however in the light of the records produced before this Court, this Court of the considered opinion that in view of the unparliamentary language and the nature of behaviour, the resolution was made on the fateful day and the impugned action had been initiated. The mere fact that the meeting as such was not preceded by three days notice may not have

serious impact on the validity or otherwise of the impugned action since the impugned action was made by the 1st respondent in pursuance of the resolution and this Court also is satisfied that the ingredients of sub-Section (5) of Section 51 of the Act are satisfied. Even otherwise, this Court also is of the considered opinion that when such unruly behaviour is adopted by the petitioners, using such unparliamentary language, especially against women Members, it would not be just and proper for the Writ Court to interfere in such matters. Viewed from any angle, this Court is of the considered opinion that the impugned action does not suffer from any legal infirmity.

15. Accordingly, the Writ Petition is bound to fail and the same is hereby dismissed. No order as to costs.

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Justice P.S.Narayana

18th October, 2006

Note: L.R.Copy to be marked (YES/NO)

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THE HON'BLE SRI JUSTICE P.S. NARAYANA

C.M.A.Nos.2602 and 3139 of 1999

COMMON JUDGMENT:-

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